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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 002338

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STATE FOR EAP/MTS

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TAGS: [PGOV](#) [PINR](#) [PREL](#) [PHUM](#) [KISL](#) [RP](#)
SUBJECT: HIGH COURT RULES AGAINST MILF PEACE DEAL

REF: A. MANILA 02178 (MINDANAO PEACE PROCESS: SEEKING A
WAY FORWARD)
[1](#)B. MANILA 01860 (SUPREME COURT DELAYS AGREEMENT)

Classified By: Ambassador Kristie A. Kenney
for reasons 1.4 (b) and (d).

[1](#)1. (C) SUMMARY: In a significant setback for the Arroyo administration, the Supreme Court on October 14 ruled by an 8-7 majority that the Memorandum of Agreement (MOA) on ancestral domain between the Philippine government and the Moro Islamic Liberation Front (MILF) was unconstitutional. The issue had been pending since August 4, when the Supreme Court issued a temporary restraining order stopping the signing of the Malaysian-facilitated agreement in Kuala Lumpur. The Supreme Court found that the provisions in the MOA allowing the proposed Bangsamoro regional government to exploit and derive revenue from the natural resources of the new territory were contrary to the Constitution, and that there was a lack of consultation that violated the right of the people to information on matters of public concern. While President Arroyo had repeatedly made clear that the government would not move forward with the agreement in its current form, the MILF insurgents have held out hopes of rejuvenating the deal. We will monitor closely any reaction from the Muslim insurgents in coming days. END SUMMARY.

SUPREME COURT FINDS AGREEMENT UNCONSTITUTIONAL

[1](#)2. (C) Following the filing of petitions by several parties challenging the legality of the MOA on procedural and constitutional grounds, the Supreme Court issued a temporary restraining order August 4 to stop the signing of the agreement (ref B). Following that move, the Supreme Court heard oral arguments on the issue on three successive Fridays. After several weeks of deliberations, the Supreme Court issued its final decision in the case on October 14, finding the agreement unconstitutional. Although the text of the decision had not yet been issued at the time of writing, Supreme Court Acting Spokesperson Gleo Guerra told us that the justices had found against the MOA on two grounds: 1) provisions in the agreement creating a Bangsamoro Juridical Entity entitled to utilize, develop, and explore the natural resources of the new territory were contrary to the Constitution, as that is an exclusive power of the national government; and 2) there was a lack of consultation that violated the right of the people to information on matters of public concern, as well as state policy of full disclosure on such matters.

DISSENT FINDS THE CASE MOOT

13. (C) According to Guerra, the seven dissenting justices believed that the constitutionality question was moot, as the Solicitor General had stated unequivocally during oral argument (and key Presidential advisors have stated publicly) that the government would not sign the agreement in any form under any circumstances. Thus, since the agreement had not been consummated and would not be consummated, there was no longer a case in controversy, rendering the case moot.

OPPOSITION REACTION PREDICTABLE

14. (C) Opposition Senators welcomed the Supreme Court ruling declaring the ancestral domain agreement unconstitutional, noting it was a display of judicial independence. However, they were concerned that the close 8-7 vote was easy to overturn. Minority leader Aquilino Pimentel III was thankful the high court did not "play footsies with Malacanang" on the issue. For Senator Manuel Roxas, the decision "slammed the door on the politics of adventurism" and rejected the partitioning of country and backdoor attempts to revise the Constitution. He also warned against a possible "manipulation by the executive" to reverse the ruling.

GOVERNMENT'S NEXT STEPS

15. (U) For its part, the government was less forthcoming. While the Palace had previously announced that it would not sign the agreement irrespective of the Supreme Court decision, Press Secretary Jesus Dureza stated immediately

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after the decision that the Palace would leave it up to the lawyers to decide what steps to take after the decision.

COMMENT

16. (C) While the Arroyo Administration has been at pains to underscore that it will not pursue the MOA as currently written, the MILF leadership has stressed repeatedly that it considered the agreement a binding deal even before the Supreme Court acted in August. We will closely monitor the MILF's reaction in coming days on both the political and military fronts. The Supreme Court deal is also a political setback for the government, as it puts the Supreme Court firmly on record against President Arroyo's centerpiece peace initiative with the MILF. In particular, the decision that the resource sharing provision of the MOA is unconstitutional takes away one of the primary incentives for the MILF in signing a final peace deal with the Philippine government. This will complicate the Arroyo Administration's efforts to forge an overall settlement and present the Administration with an even more complex task with only 19 months left to go in the Administration. As a side note, the ruling also dispels the widely held belief that the President could count on a majority of the Supreme Court. Both the original 15-0 decision to block the MOA and the current 8-7 decision make it clear that on key issues -- particularly with a judicially activist chief justice eyeing the presidential race in 2010 -- the government cannot count on carrying the day in the highest court.

KENNEY